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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

13 MARC OPPERMAN, et al.,

14 Plaintiffs,

15 v.

16 PATH, INC., et al.,

17 Defendants.
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Case No.: 13-cv-00453-JST

**JOINT STIPULATION AND
~~PROPOSED~~ ORDER GRANTING LEAVE
TO FILE SUR-REPLY**

THE HONORABLE JON S. TIGAR

THIS DOCUMENT RELATES TO CASES:

Opperman v. Path, Inc., No. 13-cv-00453-JST
Hernandez v. Path, Inc., No. 12-cv-1515-JST
Pirozzi v. Apple, Inc., No. 12-cv-1529-JST

1 WHEREAS on May 5, 2016, Plaintiffs filed their reply in support of their motion for class
2 certification, including Plaintiffs' Rebuttal Expert Declaration of Henry Fishkind, Ph.D. in
3 Further Support of Plaintiffs' Motion for Class Certification Re: Path App (the "Fishkind
4 Declaration") (ECF No. 709-10);

5 WHEREAS Local Rule 7-3(d) provides in part: "Once a reply is filed, no additional
6 memoranda, papers or letters may be filed without prior Court approval;

7 WHEREAS Defendant Apple has filed an Objection to the Fishkind Declaration (ECF
8 No. 711) which sets forth Apple's position regarding cause for allowing it to file a sur-reply to
9 respond to the Fishkind Declaration;

10 WHEREAS, the parties have meet and conferred on the issue;

11 WHEREAS Plaintiffs have agreed to make Dr. Fishkind available for deposition on
12 May 20, 2016;

13 WHEREAS the hearing on Plaintiffs' motion for class certification is currently set for
14 June 14, 2016 at 2:00 p.m.;

15 THEREFORE, the parties stipulate and agree as follows:

16 Apple may file a sur-reply no later than May 27, 2016. The sur-reply will be limited to
17 ten pages, exclusive of declarations and evidence submitted in support thereof, and will be limited
18 to responding to the Fishkind Declaration and Plaintiffs' damages analysis and arguments, to the
19 extent they rely on that testimony. The parties have further agreed that if testimony from the
20 deposition Dr. Fishkind is referenced, Apple will lodge the complete deposition transcript rather
21 than excerpts.

22 The parties reserve all arguments relating to the timing of the filing of the Fishkind
23 Declaration.

24 Respectfully submitted,

25 Dated: May 18, 2016

KERR & WAGSTAFFE LLP

26 By: */s/ Michael von Loewenfeldt*
27 James M. Wagstaffe (95535)
28 Michael von Loewenfeldt (178665)
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Dated: May 18, 2016

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ATTORNEYS FOR DEFENDANT APPLE INC.

I attest that concurrence in the filing of this document has been obtained from the other signatories listed above.

Dated: May 18, 2016

Hogan Lovells US LLP

By: /s/ Robert B. Hawk
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PROPOSED ORDER

Pursuant to the stipulation of the parties and good cause appearing, the stipulation is hereby granted in this matter as follows.

Defendant Apple Inc. is granted leave to file a sur-reply no later than May 27, 2016. The sur-reply shall be limited to ten pages, exclusive of declarations and evidence submitted in support thereof, and shall be limited to responding to Dr. Fishkind’s Declaration and Plaintiffs’ damages analysis and arguments, to the extent they rely on that testimony. If testimony from the deposition Dr. Fishkind is referenced, Apple will submit the complete deposition transcript rather than excerpts.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: May 19, 2016

